

**IN THE CIRCUIT COURT IN AND FOR THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA**

**RICHARD HOLTOM GARRETT, INDIVIDUALLY AND
AS TRUSTEE OF THE RICHARD HOLTOM GARRETT
REVOCABLE TRUST DATED JUNE 5, 2017,**

Plaintiff,

vs.

Case Number 2019 CA _____

UNIVERSITY PARK RECREATION DISTRICT,

Defendant.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, **RICHARD HOLTOM GARRETT, INDIVIDUALLY (“Garrett”) AND AS TRUSTEE OF
THE RICHARD HOLTOM GARRETT REVOCABLE TRUST DATED JUNE 5, 2017 (“Garrett Trust”)** sues
the **UNIVERSITY PARK RECREATION DISTRICT (“UPRD”)** and states:

Parties and Background

1. This is an action for declaratory and injunctive relief pursuant to Section 418.25, Florida Statutes.

2. Plaintiff, Garrett, as Trustee of the Garrett Trust, is the owner of the following described real property:

Lot 7, SLOANE GARDENS, as per plat thereof recorded in Plat Book 36, Page 119, Public Records of Manatee County, Florida (the “Garrett Property”).

3. The Garrett Property is located in a development of regional impact known as “University Park” (“the DRI”).

4. University Park consists of 1238 residential units and the golf and country club known as University Park Golf and Country Club (“UPCC”). University Park and UPCC both were developed by primarily by Woodlands Country Club Associates, LLP, a Florida limited liability partnership, f/k/a Woodlands Country Club Associates, a Florida general partnership (“Woodlands”). According to filings with the Florida Department of State, the partners of Woodlands include Woodlands Country Club Management, Inc., a Florida Corporation, and Ercon Corporation, a Florida Corporation.

The Residential Component

5. The 1,205 dwelling units¹ within University Park are governed by that certain Declaration of Covenants, Conditions, and Restrictions for University Park records in Official Records Book 1363, Page 264, of the Public Records of Manatee County, Florida, as amended (the “Declaration”). Woodlands was the original Declarant of the Declaration and continues to be the Declarant as of the filing of this Complaint. The operations of Woodlands, as the Declarant of University Park, are controlled primarily by John A. Neal, Charles Varah and James R. Schier.

6. University Park Community Association, Inc. (“UPCAI”) is a homeowners association created by Woodlands to oversee University Park and enforce its Declaration. As of the filing of this Complaint, the Board Members of UPCA are John Whyte, Ronald Tobin and Enjoli Collins.

7. Pursuant to the Declaration, Woodlands, as the Declarant, retains control of UPCA

¹Although the DRI provides for up to 1,238 dwelling units, there are only 1,205 actual residential units in University Park.

and has the right to appoint 2 of the 3 Board Members of UPCA. Woodlands' appointed Board Members are Ronald Tobin and Enjoli Collins.

8. Within University Park are several neighborhoods which elect "neighborhood chairs" to serve as liaisons with UPCA.

The Country Club Component

9. At approximately the same time that Woodlands developed the residential component, it also developed UPCC, which consists of a 27-hole golf course and practice facilities, a pro shop, a clubhouse with kitchen, administrative and community facilities, tennis courts, a croquet court, a fitness center, a golf cart storage facility, and associated facilities, including the real estate and tangible and intangible personal property which comprises it.

10. The DRI restricts the use of the golf course property to "maintain all recreation and open space" and "provide recreation and open space for golfers and non-golfers."

11. Since 1991, UPCC has operated as a semi-private country club that offers non-equity memberships to both residents and non-residents of University Park, and offers use of the country club facilities to the general public for a fee.

12. University Park Country Club Associates, LLP ("Associates") currently owns and operates UPCC. Associates, through various entities, is owned and controlled by John A. Neal.

13. University Park Restaurant Associates, Inc. ("RAI") owns the liquor license used in the operation of UPCC. RAI, is owned and controlled by James R. Schier.

14. The real property on which UPCC is situated (the "Land") is owned by the following non-parties, whom shall be collectively referred to hereinafter as the "Landowners":

- A. Keswick Investments, LLC, a Florida limited liability company (“Keswick”);
- B. University Park Partners, LLC, a Florida limited liability company (“Partners”);
- C. Durable Investments, Inc., a Florida corporation (“Durable”);
- D. Erop Corporation, a Florida corporation (“Erop”);
- E. William T. Harrison, Jr., as Trustee under Land Trust Agreement dated January 24, 1986, and under deed recorded in Official Records Book 1185, Page 285, Public Records of Manatee County, Florida (“Harrison”);
- F. Pacific Equity Associates, LLP, a Florida limited liability partnership (“Pacific”);
- G. Northern Capital Group, LLP, a Florida limited liability partnership (“Northern”); and
- H. University Park Lifestyles, Inc., a Florida corporation (“Lifestyles”).

15. Keswick, Lifestyles, and Associates are substantially controlled by John A. Neal (one of the principals of Woodlands).

16. Partners and Erop are substantially controlled by Charles Varah (also a principal of Woodlands).

17. Durable, Pacific, Northern and RAI are owned and controlled by owned and by James R. Schier.

The Sale of UPCC

18. Since approximately 2006, the Landowners, Associates and RAI (collectively “Sellers”) have been attempting to sell UPCC. Initially, in 2006, UPCC was offered for sale to the non-equity members of UPCC but a price acceptable to both parties could not be reached. On information and belief, Sellers offered to sell UPCC to the non-equity members for \$13,000,000 however, after reviewing the financial statements of UPCC, the non-equity members were willing to pay only \$5,000,000 to \$6,000,000.

19. In approximately 2016, after Woodlands sold out all 1,205 lots in the residential

component, the Landowners, Associates and RAI re-initiated their efforts to sell UPCC targeting UPCA as the potential purchaser.

20. Article 17.3 of the Declaration of UPCA states “under no circumstances shall the Country Club (meaning UPCC) ever be conveyed to the Association” and thus, UPCA would be prohibited from purchasing UPCC without amendment to the Declaration, which would require a vote of 2/3 of its 1,238 unit owners (the “Homeowners”) to do so.

21. As a result, as set forth in more detail, *infra*, Woodlands, as Declarant under the Declaration who is in control of UPCA, and Sellers (which entities have common ownership) devised a plan to form a Recreational District pursuant to Chapter 418, *Florida Statutes*, which would purchase UPCC.

22. Pursuant to Section 418.20, *et seq*, *Florida Statutes*, a Recreation District can be created to acquire, purchase, construct, improve, and equip recreational facilities of all types. An Recreational District shall be established by ordinance approved by a vote of the electors in the district, which in this instance were the individuals residing within University Park registered to vote in Manatee County, Florida (which does not necessarily include all Homeowners in University Park).

23. Seller-controlled UPCA formed the “Planning Group” or “Planning Committee” (“UPCA Planning Committee”) for the sole purpose of gathering resident support for formation of the Recreational District.

24. For many months, UPCA, through the UPCA Planning Committee, held many “information sessions” during which Sellers (through their control of UPCA) disseminated false and misleading information to the 1,205 Homeowners to obtain support for formation of the Recreational

District.

25. Additionally, the UPCA Planning Committee pressured and harassed Homeowners to obtain support for the formation of the Recreational District.

26. Relying on false and misleading information disseminated by the UPCA Planning Committee, or after being unduly pressured into compliance, a majority of the electors voted for formation of the RD, Defendant, University Park Recreation District (“UPRD”) was created on August 2, 2018 by the Manatee County Board of Commissioners pursuant to Ordinance No. 18-29, a copy of which is attached hereto as **Exhibit A** (the “Charter”). It was formed to facilitate the acquisition and management of UPCC from Sellers.

27. Pursuant to the Charter, the UPRD is governed by a Board of Supervisors (“UPRD Board”). The Members of the UPRD Board were elected on September 17, 2018. As of the filing of this Complaint, the Board Members of UPRD (4 of the 5 of whom were members of the UPCA Planning Committee) are Lisabeth Bertsch, Nancy Kopinsky, Steve Ludmerer, Michael Smith, and Bob Wood.

28. The Garrett Property is located within the UPRD.

29. On November 9, 2018, UPRD, through a vote of its Board Members, passed resolution 2019-10 to establish ad valorem and non-advalorem assessments of \$23,310,000 against the properties within UPRD to raise funds to purchase UPCC from Sellers. Attached hereto as **Exhibit B** is a copy of resolution 2019-10 excluding the voluminous Assessment allocation table attached thereto.

30. Without sufficient and independent investigation, audit and due diligence, on January

11, 2019, UPRD contracted with Sellers to purchase UPCC for the sum of \$16,975,000. A copy of the Purchase and Sale Agreement (“PSA”) is attached hereto as **Exhibit C**.

31. Without sufficient and independent investigation, audit and due diligence, on February 7, 2019, UPRD will conduct a Bond Referendum to obtain approval for it to issue \$24,000,000.00 in non-ad valorem assessment bonds to finance the purchase of UPCC. Attached hereto as **Exhibit D** is a copy of the cover letter and official ballot submitted to the Homeowners in University Park entitled to vote on the referendum (the “Ballot Package”).

The Connection Between Woodlands, Landowner, Associates, RAI, UPCA and UPCC

32. At all points in time relative to the sale and purchase of UPCC, decision making has been controlled by those who are serving the interests of the Sellers and without regard to the rights of the Homeowners.

33. Woodlands, as the Declarant of University Park who maintains control of UPCA, is controlled primarily by John A. Neal, Charles Varah and James R. Schier.

34. Associates as the owner and operator of UPCC is, through various entities, owned and controlled by John A. Neal.

35. RAI as the owner of the liquor license used in the operation of UPCC is owned and controlled by James R. Schier.

36. Keswick, Lifestyles, and Associates are substantially controlled by John A. Neal (one of the principals of Woodlands).

37. Partners and Erop are substantially controlled by Charles Varah (also a principal of Woodlands).

38. Durable, Pacific, Northern and RAI are owned and controlled by owned and by James R. Schier (the owner of the UPCC liquor license).

39. Attorney J. Michael Hartenstine is the attorney for the Sellers under the PSA, also acts as counsel for UPCA, and is the President of Ercon.

40. Attorney Mark Barnebey is the attorney for the UPRD and has previously acted as an attorney for UPCA (see **Exhibit E** attached hereto).

41. Ronald Tobin and Enjoli Collins were appointed as directors by Woodlands pursuant to the Declaration.

42. The formation of UPRD was the result of the formation of the UPCA Planning Committee by UPCA at the direction of Woodlands, which is owned and controlled by Sellers.

43. The members of the UPCA Planning Committee were chosen by UPCA and Woodlands, which is owned and controlled by Sellers.

44. Four out of the five members of the UPRD Board were members of the UPCA Planning Committee selected by UPCA, which is controlled by Sellers.

45. Hank Fishkind of Fishkind & Associates ("Fishkind") was originally hired as a consultant by Pat Neal (the father of John A. Neal) and Charles Varah in 2006 to evaluate the sale of UPCC. Attached as **Exhibit F** is correspondence referencing the engagement.

46. Later, in 2017, Fishkind was hired by UPCA to advise UPCA and the UPCA Planning Committee regarding formation of a recreation district, pursuant to the Proposal attached hereto as **Exhibit G**.

47. Now, Fishkind has been retained as the UPRD District Manager and Financial

Advisor, who is contracted to be paid in excess of \$100,000 in compensation that would not collect had the UPRD vote not been approved. As District Manager, Fishkind will be paid hourly rates for services with a minimum of \$100,000 annually. As Financial Advisor, he will be paid hourly rates for professional services plus a fee based on the amount of debt in a transaction; in other words, the more UPRD borrows, the higher his compensation. Attached hereto as Composite **Exhibit H** are the agreements between UPRD and Fishkind which have been approved by the UPRD Board.

48. UPRD has consistently acknowledged that its negotiations with the Sellers were a continuation of the UPCA Planning Committee discussions.

49. As a result of these intertwining connections, UPRD is essentially an alter ego of UPCA and the UPCA Planning Committee, all of which are ultimately controlled by the Sellers.

50. These intertwining connections between UPCA, the UPCA Planning Committee, the UPRD and their hired professionals evidence clear conflicts of interest where the Sellers have driven the process of the formation of UPRD by using UPCA as a proponent to obtain a significantly above-market sale price which does not represent an arm's length, fair market transaction to the detriment of Plaintiff and the other Homeowners.

UPCA Misrepresentations and Plaintiff's Purchase of the Garrett Property

51. Formation of the UPCA Planning Committee was announced to the Homeowners in May of 2017 by a joint communication from UPCA President, John Whyte, and John A. Neal and Charles Varah on behalf of Woodlands and UPCC, a copy of which is attached hereto as **Exhibit I**.

52. A copy of the communication attached as Exhibit I, as well as a "Q & A" and fee

disclosure sheet (collectively, the “Buyer Disclosures”), were provided to Garrett as a prospective purchaser of Property in University Park by UPCA. The Buyer Disclosures are attached hereto as **Composite Exhibit J** and repeatedly state that UPCC would be *purchased or acquired* by the Homeowners, not by an independent Recreation District with unfettered authority to impose assessments through an entity where the Homeowners would retain no ownership in the UPCC property and facilities.

53. In reliance upon the Buyer Disclosures, Plaintiff purchased the Garrett Property on September 29, 2017, and a copy of the Warranty Deed from his purchase is attached hereto as **Exhibit K**.

***The Formation of UPCA and Selection of a Recreation District as the Vehicle
for Purchase of UPCC***

54. The UPCA Planning Committee was formed in early 2017 and its formation was announced to the Homeowners on May 15, 2017 by John A. Neal, Charles Varah and John Whyte, President of the UPCA.

55. UPCA handpicked each member of the UPCA Planning Committee based on their previous expression of support for the establishment of the Recreational District to purchase UPCC. Eighty percent (80%) of the members of the UPCA Planning Committee were full golf members of UPCC, who would have a direct interest in approval of the Recreational District and bond assessment to purchase and maintain the club facilities rather than incur increased membership dues.

56. UPCA discouraged other Homeowners from participating in the UPCA Planning Committee to assure that one and only one method for purchasing UPCC was considered. (See p. 4 of **Exhibit J** attached hereto).

57. While the UPCA Planning Committee purported to consider multiple alternatives for the turnover of UPCA and acquisition of UPCC by the residents of University Park, in actuality, only the Recreational District formation and bond assessment methodology was truly pursued, a structure where UPCA would not in fact be the owner of UPCC as represented in UPCA's May 15, 2017 announcement. Attached hereto as **Exhibit L** is a copy of the presentation slides used at a July 7, 2017 presentation by the UPCA Planning Committee to Homeowners suggesting several possible methodologies for purchase of UPCC (pages 10-11) but analyzing only the Recreational District as a viable option (pages 11-15).

58. Because the UPCA Planning Committee pursued only the use of the Recreational District and bond assessment methodology to purchase UPCC, neither the UPCA Planning Committee nor UPCA conducted an evaluation independent of influence from Woodlands, John A. Neal, Charles Varah, James R. Schier, and the Landowners as to what was in the best interests of the Homeowners who are now the parties subject to the proposed \$24,000,000 UPRD assessment.

The Petition Process

59. Pursuant to Section 418.20, Florida Statutes, a Recreational District can be formed with electors residing in a proposed district to petition the governing body of the city or county to create a recreation district. If a majority of electors has signed the petition, no referendum shall be required to create the district.

60. To introduce the petition process to Plaintiff and the other Homeowners, the UPCA Planning Committee began to hold meetings in January 2018. Plaintiff and other Homeowners were led to believe that use of a Recreation District would permit them to retain ownership and control

of UPCC and to have input regarding the terms and structure of the acquisition of UPCC. However, contrary to what Plaintiff and the Homeowners were told, the owner of UPCC will be UPRD, and not the Homeowners and it will be the UPRD who that will have the sole ability to manage UPCC.

61. At the meetings, the UPCA Planning Committee regularly and consistently disseminated false and misleading information to Plaintiff and the Homeowners in an effort to gather signatures for the petition needed to form the Recreational District. For example, the UPCA Planning Committee displayed several renderings of Plaintiff's and other Homeowners' backyards being turned into homes, apartments, or livestock pasture, which resulted in a false sense that the Homeowners had no choice but to accept a Recreation District as their sole option to purchase and preserve use of UPCC as a country club. Attached hereto as **Exhibit M** is an example of a graphic shown to Homeowners during this process, depicting the golf course built out into an additional 1,214 residential lots and 704 multi-family apartment units (identification of the Garrett Property has been added).

62. The UPCA Planning Committee misrepresented to Plaintiff and other Homeowners that the Sellers had existing approvals or rights to develop the Land as additional single-family and multi-family residential areas, and alternatively that the Sellers could to use the Land as agricultural property for a period of time in order to obtain any required rezoning necessary for redevelopment.

63. Attached hereto as **Exhibit N** are copies of presentation slides from January 2018 UPCA Planning Committee meetings with Homeowners, which state on slide 19, as part of a thinly veiled threat regarding the alternatives to supporting formation of the Recreational District, that "[o]utside counsel's opinion is that developer will probably win approval" for development. This

is contrary not only to the DRI approvals but is a gross and willful mischaracterization of the opinion letter written for UPCA by attorney Mark Barnebey, attached hereto as Exhibit E, which concluded that “it is possible to redevelop at least a portion of the golf course, but it would require action by the Manatee County Commission, a number of public hearings and would not be a certainty.”

64. In an effort to secure petition signatures from a majority of electors needed to form the Recreational District, the UPCA Planning Committee told Plaintiff and other Homeowners were told that the use of a Recreation District to purchase UPCC would result in annual tax assessments of an additional \$1,200 per year, per unit. However, the UPCA Planning Committee failed to inform Plaintiff and other Homeowners that the Recreation District actually possesses the power to levy assessments in an unlimited amount as deemed necessary for operation and maintenance of UPCC.

65. To obtain the requisite number of signatures on the Petition, on December 13, 2017, the Seller controlled board of UPCA suspended a use restriction in the Declaration for the specific purpose of allowing door-to-door solicitations to obtain signed petitions for the formation of UPRD in support of the acquisition of UPCC from Seller. Attached hereto as **Exhibit O** are the relevant excerpts from the minutes of the December 13, 2017 meeting.

66. Although the use restriction prohibiting door-to-door solicitation was suspended, UPCA refused to permit Homeowners to conduct door-to-door solicitation under this provision for purposes of opposing the formation of the Recreational District. Attached hereto as **Exhibit P** is correspondence from UPCA to Homeowners Mr. and Mrs. Thomas Lordi, demanding that they immediately refrain from solicitation under the suspended Declaration’s prohibition on the same.

67. In February 2018, UPCA and UPCA Planning Committee started a “petition drive” to obtain a sufficient number of signatures for formation of UPRD. Attached hereto as **Exhibit Q** is a copy of the form of the petition (“Petition”). It notably **does not** include an option to vote against formation of UPRD.

68. In support of the petition drive, neighborhood chairs working on behalf of UPCA, worked diligently to obtain signatures on the petition, often using coercive and harassing tactics and often misrepresenting facts to obtain the requisite number of signatures on the petition. By way of example, attached hereto as **Exhibit R** is an e-mail from Polly Curran, neighborhood chair for the Henley Neighborhood, in which she incorrectly stated that, “even if you are not sure you are in favor, you should sign the petition; there is no financial obligation at this point.”

69. In support of the petition drive, neighborhood chairs working on behalf of UPCA went door-to-door in each neighborhood, often coercing and harassing Homeowners to sign the petition in face-to face meetings, through door-to-door solicitation and by email. If a Homeowner refused to sign the Petition, they were visited again and again, each time seeking a signature on the Petition which efforts resulted in many Homeowners being harassed to the point where they signed the Petition simply to avoid further solicitation.

70. Notwithstanding the objectionable methods used by UPCA, UPCA Planning Committee and neighborhood chairs to obtain signatures on the Petitions, the Petition form itself was not fair and objective. The Petition on its face states that a copy of the proposed charter was attached for review by the Homeowners, however, the charter was not attached to the Petition and available to be reviewed as each Homeowner signed.

71. Additionally, the Petition form is one-sided, allowing any elector to vote only in favor of the formation of the Recreational District with no opportunity to register a vote in opposition.

72. Furthermore, the Charter, which was to be attached to the Petition and provide important information to the electors when considering their vote, contains overreaching provisions that permit UPRD to, for example, obtain short term financing or assess Homeowners without their affirmative vote, powers that would have been material in any informed decision on whether to sign the Petition.

73. The entire petition process is violative of basic due process principles, as signatures from tenants or other occupants who are not Homeowners were acceptable merely because they are registered voters within the UPRD, while the burden for all assessments to be imposed by UPRD is attributed to the Homeowners, some of whom are not registered voters and who were not able to vote against the formation UPRD.

Terms of Purchase of UPCC

74. Since its formation, UPRD has fast-tracked the purchase of UPCC and has refused to use reasonable diligence or consider any alternative to acquisition of UPCC beyond a the payment of an inflated price, with a quick closing, and the issuance of bonds at the expense of Homeowners (most of whom are not members of the Country Club) which going forward, will affect the value of the Homeowners' properties.

75. UPRD has acknowledged that its negotiations with the Sellers were a continuation of the UPCA Planning Committee discussions.

76. As set forth in detail, *supra*, UPRD is essentially an alter ego of UPCA and UPCA

Planning Committee. The Sellers have driven the process of the formation of UPRD by using UPCA to facilitate a sale of the UPCC at an inflated, above-market price that does not represent an arm's length, fair market transaction, without the proper investigation and diligence that a reasonably prudent, third-party purchaser would employ in a similar transaction.

77. In approximately July 2017, UPCA engaged an out-of-state appraisal firm, HVS Golf Services ("HVS") to appraise the assets of UPCC.

78. Using incorrect data, insufficient analysis and hypothetical assumptions, HVS issued its initial appraisal report valuing UPCC at \$6,200,000, a value that fails to consider approximately \$3,000,000 in deferred maintenance expenses that have not been made by Sellers, which should result in an even lower valuation.

79. When the value of the \$6,200,000 appraisal was not sufficient to meet Seller's desired sales price, HVS was asked to revise its appraisal to increase UPCC's appraised value. HVS issued then issued a revised appraisal dated October 31, 2017, valuing UPCC at \$13,500,000 (the "HVS Appraisal"). A copy of the HVS Appraisal is attached hereto as **Exhibit S**.

80. The HVS Appraisal incorporates false, hypothetical assumptions regarding the ability to develop the Land determines a hypothetical, future use land value of \$47,000,000.

81. The HVS Appraisal also relies upon an inflated and unsupported net operating profit from the country club operations of \$1,000,000, when on information and belief, the operation of UPCC results in an annual operating deficit (which Associates has been paying). The HVS Appraisal includes an income approach, an approach to value that would require the appraiser to review and analyze the financial statements of UPCC. However, UPCA, HVS' client, has

indicated that they do not have the financial statements of UPCC to supply to HVS (or at least not to provide to Plaintiff pursuant to his records request).

82. The HVS Appraisal also projects, without any apparent basis for doing so, substantial income increases to UPCC for the 2019-2020 and 2020-2021 fiscal years, which has further artificially inflated its appraised value.

83. Plaintiff and other Homeowners have repeatedly asked UPRD to consider alternate valuations and to provide financial audit documents for UPCC, but UPRD has refused.

84. Instead, and notwithstanding the fact that UPCC's already inflated appraised value pursuant to the HVS Appraisal is \$13,500,000, the purchase price for the purchase of UPCC by the UPRD was set at \$16,975,000, as set forth in the PSA (Exhibit B).

85. UPRD has also been advised that HVS was not a licensed appraiser pursuant to Florida law at the time of its preparation of the HVS appraisal, and that its principal, Darius M. Hatami is subject to disciplinary action by the Florida Department of Business and Regulation (see **Exhibit T** attached) for unlicensed activity in the State of Florida. However, the UPRD refuses to obtain a second appraisal or otherwise perform any amount of reasonable diligence related to the value of the assets it is contractually obligated to purchase, as any reasonable, independent third-party purchaser would perform in a similar transaction.

86. At the request of a Homeowner, Roger Hettema of the Hettema & Saba appraisal firm, a locally respected and experienced licensed Florida appraiser, has prepared an Appraisal Review Report of the HVS Appraisal, a copy of which is attached hereto as **Exhibit U** (the "Hettema Report"), which identified countless flaws and discrepancies in the HVS Appraisal and concluded

that no reliance should be placed on the HVS Appraisal.

87. Although the Hettema Report has been made available to UPRD and UPCA, UPRD refuses to review or renegotiate the purchase price of UPCC with the Sellers.

88. Rather, UPRD insists on proceeding with the February 7, 2019 Bond Referendum and closing under the PSA, despite the Purchase Price being inflated, insufficient due diligence and disclosure of materials to Homeowners, and terms which are unconscionably favorable to the Sellers to the detriment of the Homeowners.

The Bond Approval Process

89. As of January 29, 2019, UPRD continues to use UPCA, directly and indirectly, to disseminate information to Homeowners via e-mail. On January 29, 2019, UPCA sent the email attached hereto as **Exhibit V** to all Homeowners in support of the UPRD bond approval but yet continues to deny Plaintiff and other Homeowners access to the UPCA email list of Homeowners to communicate information opposing the bond approval.

90. To the detriment of Plaintiff and the Homeowners and in favor of a quick closing on the purchase of UPCC, the UPRD has negotiated short term financing to provide the funds for the purchase of UPCC prior to issuance of bonds. The use of short term financing without confirmation that the bond referendum will be approved or the bonds validated imposes an unnecessary and imprudent financial risk on the Homeowners that was never communicated to the Homeowners prior to the formation of UPRD.

91. According to the Ballot Package, the bonds will be repaid by non-ad valorem assessments; however, UPRD has approved an assessment roll which includes both ad valorem and

non-ad valorem assessments to support repayment of the bonds and for payment of the anticipated deficiencies in the operation of the country club.

92. Under the UPRD's current plans to close under the PSA, each Homeowner within UPRD, will become obligated to pay between \$22,697 and \$112,266 in annual assessments over the 30 year payment schedule.

93. On page 22 of the minutes of the UPRD Board's November 9, 2018 workshop, the UPRD Board directed that the following items were to be included in the referendum package provided to Homeowners for consideration as part of their vote:

- a. Audited UPCC financials for 2017,
- b. YTD Club Budget for 2018,
- c. Proposed Budget for 2019 based on acquisition by [UPRD],
- d. The Purchase and Sale Contract,
- e. Snell Report, and
- f. Additional Information about Repairs and Deferred Maintenance.

A copy of the pertinent excerpts from the minutes is attached hereto as **Exhibit W**.

94. However, the Ballot Package sent to Homeowners includes only the letter, ballot, and a return envelope as shown in Exhibit C. Homeowner are instead directed to the UPRD website, where the documents reflected in paragraph 93 a, b, and c, are not posted and thus unavailable to Homeowners. Furthermore, the letter assumes that all Homeowners have sufficient access to technology to view what limited materials are available, but many Homeowners are elderly and have limited technology skills prohibiting their review of ANY documents to be considered before voting.

95. The UPRD website also currently has several documents posted as part of its bond referendum materials which are inflammatory and intimidating in nature, targeting inquiries and suggestions that have been made by Plaintiff and other Homeowners.

96. As of the filing of this Complaint, the UPRD is actively campaigning for Homeowners to return bond referendum ballots before having all relevant information to make an informed decision.

97. Plaintiff has retained The Edwards Law Firm, PL to represent him in this matter and is obligated to pay a reasonable attorney's fees for services rendered.

98. All conditions precedent have been satisfied or have been waived by Defendants.

COUNT I - DECLARATORY RELIEF

99. This is an action for declaratory judgment and supplemental relief pursuant to Chapter 86, Florida Statutes, and Section 418.25, Florida Statutes.

100. Plaintiff realleges and incorporates paragraphs 1 through 98 as though fully set forth herein.

101. Plaintiff feels aggrieved by the adoption of the Charter.

102. The adoption of the Charter was arbitrary in that:

- it was premised upon the submission of petitions which were obtained without providing necessary facts to the signers,
- was premised upon the dissemination of false and misrepresentative information to Plaintiff and other Homeowners,
- was premised on activities of UPCA in breach of its statutory and fiduciary responsibilities to Plaintiff and other Homeowners,
- was procured in a way intended to grant the UPRD Board the authority to intentionally and deliberately pay above-market rates for assets at the expense of Plaintiff and other Homeowners,
- was procured when apparent and glaring conflicts of interest were not eliminated or otherwise avoided,
- was procured for the sole purpose of enriching the Sellers to the detriment of Plaintiff and other Homeowners,
- was procured through coercion and intimidation of Plaintiff and other Homeowners,
- procured through a process that violated the due process rights of Plaintiff

- and other Homeowners,
- resulted in a Charter that gives the UPRD Board authority far beyond what was represented to Plaintiff and other Homeowners in the Petition process, specifically with regard to their authority to incur expenditures and approve additional assessments against Plaintiff and Homeowners in excess of the amount needed to acquire UPCC, and,
- in adopting the Charter, there was no showing that the special assessments to be levied by the UPRD upon the Homeowners will provide a “special benefit” to the Homeowners since to use the facilities, a Homeowner must also pay membership dues to UPCC .

103. The adoption of the Charter was capricious in that:

- it was premised upon the submission of petitions which were obtained without providing necessary facts to the signers,
- was premised upon the dissemination of false and misrepresentative information to Plaintiff and other Homeowners,
- was premised on activities of UPICAI in breach of its statutory and fiduciary responsibilities to Plaintiff and other Homeowners,
- was procured in a way intended to grant the UPRD Board the authority to intentionally and deliberately pay above-market rates for assets at the expense of Plaintiff and other Homeowners,
- was procured when apparent and glaring conflicts of interest were not eliminated or otherwise avoided,
- was procured for the sole purpose of enriching the Sellers to the detriment of Plaintiff and other Homeowners,
- was procured through coercion and intimidation of Plaintiff and other Homeowners,
- procured through a process that violated the due process rights of Plaintiff and other Homeowners, and,
- resulted in a Charter that gives the UPRD Board authority far beyond what was represented to Plaintiff and other Homeowners in the Petition process, specifically with regard to their authority to incur expenditures and approve additional assessments against Homeowners in excess of the amount needed to acquire UPCC, and,
- in adopting the Charter, there was no showing that the special assessments to be levied by the UPRD upon the Homeowners will provide a “special benefit” to the Homeowners since to use the facilities, a Homeowner must also pay membership dues to UPCC .

104. The adoption of the Charter was confiscatory in that:

- it was premised upon the submission of petitions which were obtained without providing necessary facts to the signers,
- was premised upon the dissemination of false and misrepresentative information to Plaintiff and other Homeowners,
- was premised on activities of UPCA in breach of its statutory and fiduciary responsibilities to Plaintiff and other Homeowners,
- was procured in a way intended to grant the UPRD Board the authority to intentionally and deliberately pay above-market rates for assets at the expense of Plaintiff and other Homeowners,
- was procured when apparent and glaring conflicts of interest were not eliminated or otherwise avoided,
- was procured for the sole purpose of enriching the Sellers to the detriment of Plaintiff and other Homeowners,
- was procured through coercion and intimidation of Plaintiff and other Homeowners,
- procured through a process that violated the due process rights of Plaintiff and other Homeowners,
- resulted in a Charter that gives the UPRD Board authority far beyond what was represented to Plaintiff and other Homeowners, specifically with regard to their authority to incur expenditures and approve additional assessments against Homeowners in excess of the amount needed to acquire UPCC, and,
- in adopting the Charter, there was no showing that the special assessments to be levied by the UPRD upon the Homeowners will provide a “special benefit” to the Homeowners since to use the facilities, a Homeowner must also pay membership dues to UPCC .

105. The adoption of the Charter is violative of constitutional guarantees in that:
- it was premised upon the submission of petitions which were obtained without providing necessary facts to the signers,
 - was premised upon the dissemination of false and misrepresentative information to Plaintiff and other Homeowners,
 - was premised on activities of UPCA in breach of its statutory and fiduciary responsibilities to Plaintiff and other Homeowners,
 - was procured in a way intended to grant the UPRD Board the authority to intentionally and deliberately pay above-market rates for assets at the expense of Plaintiff and other Homeowners,
 - was procured when apparent and glaring conflicts of interest were not eliminated or otherwise avoided,
 - was procured for the sole purpose of enriching the Sellers to the detriment of Plaintiff and other Homeowners,
 - was procured through coercion and intimidation of Plaintiff and other Homeowners,

- procured through a process that violated the due process rights of Plaintiff and other Homeowners,
- resulted in a Charter that gives the UPRD Board authority far beyond what was represented to Plaintiff and other Homeowners, specifically with regard to their authority to incur expenditures and approve additional assessments against Homeowners in excess of the amount needed to acquire UPCC, and,
- in adopting the Charter, there was no showing that the special assessments to be levied by the UPRD upon the Homeowners will provide a “special benefit” to the Homeowners since to use the facilities, a Homeowner must also pay membership dues to UPCC .

106. Plaintiff contends that because the adoption of the Charter was arbitrary, capricious, confiscatory, and/or violative of constitutional guarantees, the Charter should be terminated or amended to eliminate the offending provisions.

107. There is a bona fide adverse interest between the parties concerning Plaintiff’s rights and privileges with respect to UPRD and its acquisition of UPCC.

108. Plaintiff is in doubt about the existence or non-existence of his rights and privileges.

109. Plaintiff is entitled to have his doubt removed.

WHEREFORE, Plaintiff, Richard Holtom Garrett, Individually and as Trustee of the Richard Holtom Garrett Revocable Trust dated June 5, 2017, respectfully requests entry of a judgment pursuant to Section 418.25, Florida Statutes, declaring that the formation of University Park Recreation District was arbitrary, capricious, confiscatory, and/or violative of constitutional protections, and, as supplemental relief pursuant to Section 86.011, Florida Statutes, terminating its Charter or amending the Charter to remove the offending provisions, and for such other relief as the Court deems proper.

COUNT II - TEMPORARY INJUNCTIVE RELIEF

110. This is an action for injunctive relief pursuant to section 418.25, Florida Statutes

111. Plaintiff realleges and incorporates paragraphs 1 through 98 and 101 through 105 as though fully set forth herein.

112. UPRD's pursuit of approval of the bond referendum, short term financing, and performance of the PSA will obligate Plaintiff and the other Homeowners to decades of assessments, causing immediate and irreparable injury to Plaintiff and the other Homeowners.

113. Currently, UPRD is able to terminate the PSA prior to closing if the bond referendum has not passed, without any further obligations.

114. There is no remedy at law which will prevent harm to Plaintiff's interests and the interest of the other Homeowners during the pendency of this action.

115. Plaintiff has a good faith belief that he will prevail on the merits of this action.

116. Plaintiff will post a bond as the Court may set as a prerequisite to the granting of a temporary injunction.

WHEREFORE, Plaintiff Richard Holtom Garrett, Individually and as Trustee of the Richard Holtom Garrett Revocable Trust dated June 5, 2017, respectfully requests entry of a temporary injunction prohibiting UPRD from proceeding with the February 7, 2019 Bond Referendum, short term financing, and closing under the Purchase and Sale Agreement until such time as the Court may confirm whether the terms thereof are equitable to the Plaintiff and other Homeowners and represent an arm's length, fair market value transaction and, if they are not, determine what terms would meet such criteria, and for such other relief as the Court deems proper.

COUNT III - PERMANENT INJUNCTIVE RELIEF

117. This is an action for injunctive relief pursuant to section 418.25, Florida Statutes.

118. Plaintiff realleges and incorporates paragraphs 1 through 98 and 101 through 105 above as though fully set forth herein.

119. UPRD's pursuit of approval of the bond referendum, short term financing, and performance of the PSA will obligate Plaintiff and the other Homeowners to decades of assessments, causing permanent and irreparable injury to Plaintiff and other Homeowners.

120. There is no remedy at law which will prevent harm to Plaintiff's interests and the interest of the other Homeowners during the pendency of this action.

WHEREFORE, Plaintiff Richard Holtom Garrett, Individually and as Trustee of the Richard Holtom Garrett Revocable Trust dated June 5, 2017, respectfully requests entry of a permanent injunction prohibiting UPRD from proceeding with the February 7, 2019 Bond Referendum, short term financing, and closing under the Purchase and Sale Agreement until such time as the Court may confirm whether the terms thereof are equitable to Plaintiff and the Homeowners and represent an arm's length, fair market value transaction and, if they are not, determine what terms would meet such criteria, and for such other relief as the Court deems proper.


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Verification

Under the penalty of perjury, I declare that I have read the foregoing and the facts alleged therein are true and correct to the best of my knowledge and belief.

By: _____



Richard Holtom Garrett, Individually and as
Trustee of the Richard Holtom Garrett
Revocable Trust dated June 5, 2017